

**CITY OF MINNEAPOLIS
CITY COUNCIL
PUBLIC SAFETY AND REGULATORY SERVICE COMMITTEE**

In the Matter of the Class A on-sale
Liquor License with Sunday Sales,
Held by Banana Joe's of Minnesota, Inc.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATIONS**

This matter came on for a Technical Advisory Committee (TAC) Hearing on December 5, 2002 to discuss issues related to the operation of Banana Joe's of Minnesota, Inc., d/b/a Banana Joe's Island Bar & Grill (Banana Joe's), located at 15 South Fifth Street, Minneapolis, Minnesota. Present at the TAC hearing were the following representatives of Banana Joe's: Michael Dennis, Corporate Operations Manager, Jay Stohl, Minneapolis Manager, and attorney Tom Harlan of Dunkley, Bennett, Christensen & Madigan, P.A. Also present were the following representatives of the City of Minneapolis: Lieutenant Phil Hafvenstein, Lieutenant Tony Diaz, Sergeant Kent Warnberg, Officer Chris Guelcher, Officer Clark Goset, Officer Craig Williams and CPS Luther Krueger of the Minneapolis Police Department.

Based upon the evidence presented at the hearing(s), the parties have agreed that certain actions of Banana Joe's may have violated the terms of its license and determined that this matter should be settled according to the Recommendations herein. Based upon the agreement between the parties and all files and records herein, the Committee makes the following:

FINDINGS OF FACT

1. On or about March 14, 2001 and March 21, 2001, a Technical Advisory Committee (TAC) hearing was held to discuss issues related to the operation of Banana Joe's of Minnesota, Inc., d/b/a Banana Joe's Island Bar & Grill (Banana Joe's), located at 15 South Fifth Street, Minneapolis, Minnesota. A Finding of Facts, Conclusions and Recommendations (hereafter referred to as the 2001 TAC Agreement) arising out of those meetings were approved by the Minneapolis City Council on or about December 28, 2001 with an effective date of January 5, 2002.

2. In their 2001 TAC Agreement, Banana Joe's agreed to fourteen recommendations, provided a three day suspension of their Class A On Sale Liquor License with Sunday Sales be stayed for a period of four months commencing January 5, 2002. Among the fourteen recommendations Banana Joe's agreed to were a \$10,000.00 civil fine; strict adherence to their 850 person legal occupancy level; implementation of immediate and on-going server training for employees regarding sales to minors and sales to obviously intoxicated persons; submit applications for three on-site residential managers as required by City ordinance and to schedule two of those managers every Friday and Saturday night; institute immediate and on-going communications with the Minneapolis Police Downtown Command regarding critical incidents and upcoming events; review their security procedures and meet with the Minneapolis CCP SAFE teams regarding methods of crowd control; install and maintain surveillance cameras; and that Banana Joe's would, at all times, maintain and operate security that is adequate to ensure the safety and welfare of the business, its patrons and its employees.

3. On or about February 3, 2002, Minneapolis Police officers responded to a fight at Banana Joe's. While attempting to place a suspect under arrest, one uniform officer was punched in the face. Further investigation indicated the suspect was so intoxicated he thought he was swinging at a civilian, not an officer. Suspect had been drinking at Banana Joe's and was ejected from the club. Suspect was apprehended in front of the business.

4. On or about February 9, 2002, Minneapolis Police officers were dispatched to a fight at 509 Hennepin, the parking lot next to Banana Joe's. There witnesses stated a person had been fighting with a group in the parking lot and had been swinging his belt above his head when he struck a vehicle with it, and then kicked the vehicle. Suspect resisted arrest and several officers were needed to subdue and handcuff him. Defendant stated he had been at Banana Joes' where he was served three (3) shots of whiskey and four (4) Coronas. Defendant was obviously intoxicated and vomited in the garage at the Hennepin County Adult Detention Center.

5. On May 5, 2002 the three day suspension stayed in the 2001 Technical Advisory Committee (TAC) agreement expired.

6. On or about May 9, 2002, Minneapolis police officers observed a large fight in front of Banana Joe's. A crowd of approximately 30 people were "cheering on" the fight. Due to the size of the fighters, officers feared for their safety, and used mace to break up the fight. The fighters and crowd fled the area, running in multiple directions.

7. Approximately one week prior to November 6, 2002, Jay Stohl, Banana Joe's manager, advised Lt. Tony Diaz of the 1st Precinct (formerly the Downtown

Command) that on November 6, 2002 they were bringing in a hip-hop performer known as JUVENILE. He asked Lt. Diaz if he had any recommendations given the crowds and problems similar acts have attracted. Lt. Diaz stated he advised Mr. Stohl to implement the use of metal detectors at the doors and to have enough security to handle the crowd.

8. On or about 1:00 AM on November 7, 2002, Minneapolis Police officers began responding to a large fight and multiple stabbings at Banana Joe's. During the next two hours, fourteen squads from the 1st precinct and surrounding precincts were assigned to this event. In all, six of Banana Joe's customers were treated at the Hennepin County Medical Center Emergency Room. Ambulances transported three of the victims. Friends of the victims transported the other three to the hospital. Five were stabbed, two so seriously they had to be treated in the stabilization room; one was treated for other injuries.

9. One of those injured was a 20-year-old male who told investigators he was at Banana Joe's when he was stabbed. He further stated he had "two beers" while he was there.

10. When investigators assigned to the multiple stabbing cases requested the video surveillance tapes from Banana Joe's from the night of November 6 and morning of November 7, 2002 there were told by Jay Stohl that the surveillance cameras were not connected to any type of recording device.

11. At the TAC hearing, Michael Dennis stated that the surveillance cameras were, in fact, recorded off-premise via the internet. When CPS Luther Krueger asked Mr. Dennis how long the tapes were retained he stated 30 days. Since the events of

November 6-7, 2002 occurred within the past 30 days, Mr. Dennis was asked to secure and provide them as soon as possible following the TAC hearing. Mr. Dennis then stated he seemed to recall some technical difficulties with the servers where the surveillance video is captured and wasn't sure if the tapes still existed. He was then asked to provide the name of the internet service used to capture the surveillance images and he stated he would do so immediately following the TAC hearing.

12. Mr. Tom Harlan, attorney for Banana Joe's, contacted Sgt. Kent Warnberg at approximately 4:00 PM on December 5, 2002 and stated he had been told by Mr. Dennis that he was mistaken. The surveillance cameras at the Minneapolis Banana Joe's were not connected to any recording devices. It was the cameras at the Milwaukee Banana Joe's that were connected via the internet. According to the Milwaukee Police License Unit, the Milwaukee Banana Joe's has been out of business for at least six months.

13. At the TAC hearing, Jay Stohl confirmed Lt. Diaz had advised him to use metal detectors and increase security for November 6, 2002. Instead, Mr. Stohl stated he used only ten (10) security people that night, the same as any weekend night, all clothed in bright orange "security" shirts. The only additional security he had were four people hired by JUVENILE's promoter to lookout for the performer. He also stated he failed to get metal detectors for the event.

14. Mr. Stohl stated he directed other staff to call police for assistance when attempts to control some of the crowd were unsuccessful. He further stated he did not observe any of the stabbings referred to by the Minneapolis Police; that he believed

Banana Joe's did not violate their 850 person capacity that night; and that all employees working that night had completed alcohol service and awareness training.

15. Mr. Stohl further stated he was unaware of any other incidents at Banana Joe's.

16. In relating the events of the morning of November 7, 2002, Officer Guelcher and Officer Goset both stated many of the people coming out of Banana Joe's were obviously intoxicated and out of control, prompting supervisors at the scene to request response squads from the other precincts to assist them. Ambulances attempting to reach the victims were delayed by the crowd and congestion in the street. The front window of Banana Joe's was broken out and customers were allowed to go in and out the front door of the bar unchallenged by security, even though it was well after closing time.

17. Officer Guelcher likened this to other calls at Banana Joe's in that there appeared to be no visible security presence and no one really in charge. None of the officers present at the TAC hearing recalled seeing anyone in an orange security shirt outside the bar the morning of November 7, 2002.

18. Lt. Tony Diaz stated that Sgt. E.T. Nelson, the supervisor on-scene the morning of November 7, 2002 estimated the crowd at Banana Joe's to be far in excess of their legal limit of 850 persons.

19. Shortly after the incident of May 9, 2002 officers from the Minneapolis Police License Investigation Division met with representatives of Banana Joe's to discuss concerns raised by that incident and Banana Joe's progress and performance under the 2001 TAC Agreement. The parties agreed Banana Joe's was not in violation

based on information provided by Banana Joe's, police calls for service, the nature of those calls and the timing of the May 9, 2002 incident which occurred four days after the expiration of the stayed suspension.

CONCLUSIONS

1. Banana Joe's personnel served alcohol to obviously intoxicated persons, in violation of Minneapolis Code of Ordinances, § 360.60, and Minn. Stat. § 340A.502, though no criminal tickets or citations have been issued.

2. Banana Joe's personnel served alcohol to underage persons, in violation of Minn. Stat. § 340A.503, subd. 2(1), though no criminal tickets or citations have been issued.

3. Banana Joe's has not demonstrated its ability to maintain their legal occupancy of 850 persons, a violation of their 2001 TAC Agreement.

4. Banana Joe's has not reviewed its security procedures or met with the Minneapolis CCP SAFE teams regarding methods of crowd control, a violation of their 2001 TAC Agreement.

5. Banana Joe's security has repeatedly demonstrated its inability to adequately control the crowds Banana Joe's attracts, a violation of their 2001 TAC Agreement, thereby creating a risk to the safety and welfare of the business, its patrons and its employees.

RECOMMENDATION

That the Class A On Sale Liquor License, with Sunday sales be suspended for seven days, and that three days of the suspension be stayed for a period of twelve months from the effective date of this agreement on the following conditions:

1. That four days of the seven day suspension be served on February 26, 27, 28 and March 1, 2003, a consecutive Wednesday, Thursday, Friday and Saturday.

2. That Banana Joe's pay a fine of \$20,000.00 within 60 days of the effective date of this agreement.

3. That as of the effective date of this agreement, the occupancy level of Banana Joe's is set at a maximum of 850 persons. Banana Joe's agrees that it will, at no time, exceed this capacity unless the City of Minneapolis agrees, in writing, to an increased occupancy level. Rules and procedures to insure compliance with legal occupancy limits are the responsibility of the licensee and its management to implement and maintain.

4. Banana Joe's agrees that it will train all its employees at least quarterly in over-serving, management of alcohol consumption by patrons, sales to underage persons and other alcohol service issues. This training will be provided by one or more alcohol awareness/loss prevention specialists approved by the Minneapolis Department of Licenses and Consumer Services.

5. Banana Joe's agrees that it will provide training for all of its management and security personnel at least quarterly regarding effective communications, recognizing the signs of intoxication, dealing with inebriated persons, use of force, and effective crowd control inside and outside the business during all hours of operations, and at closing time.

6. Banana Joe's agrees that it will initiate and maintain twice-weekly personal contact by their management team with the 1st Precinct, North Sector Command staff and CCP SAFE staff, to insure complete and timely communication of

planned events, problems, or other circumstances that may effect the need for police services.

7. Banana Joe's agrees that it will fulfill its responsibility under the 2001 TAC Agreement to maintain three (3) on-site residential managers at its establishment and that it will report the names and addresses of each manager to the appropriate City officials, as required by MCO 362.120(o), and 362.330(b). Banana Joe's further agrees that two of these managers will be working at Banana Joe's every Friday and Saturday nights. Banana Joe's further agrees that it will, at all times, maintain and operate security that is adequate to ensure the safety and welfare of the business, its patrons and its employees.

8. Banana Joe's agrees that within 14 days of the effective date of this agreement they will install, maintain and implement the use of electronic recording devices approved by the Minneapolis Police Department Identification Division. Said devices will be set to capture the images of all surveillance cameras installed inside, and outside, of the business including, at a minimum, cameras that record all activity at every entrance and/or exit to the business. All recordings will be maintained for a minimum of thirty (30) days and will be made available to the chief of police or his designee upon request.

9. Banana Joe's agrees that no same or similar violations will occur at the licensed premises for a period of twelve months from the effective date of this agreement. For purposes of this recommendation, "same or similar violations" shall include any violations of Minnesota Statutes or Minneapolis Code of Ordinances (MCO) including, but not limited to statutes and ordinances related to liquor licensing

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and liquor laws, including sale of liquor to minors and sale or furnishing of liquor to obviously intoxicated persons; violations of Minnesota Code of Ordinances related to licensed establishments, failure to maintain on-site management at Banana Joe's, or failure to timely report a change in on-site management to the City; failure to effectively control patrons at Banana Joe's; failure to comply with occupancy limits; or any violation of the terms of this agreement. If Banana Joe's has a same or similar violation within 12 months from the effective date of this agreement, the three (3) day suspension that was stayed will be imposed. The three days will be a consecutive Thursday, Friday and Saturday with the exact dates to be identified by the commander of the Minneapolis Police Department License Investigation Division.

10. This agreement shall not preclude any other adverse license action, including but not limited to suspension or revocation, for subsequent violations of this agreement, or of any federal, state or local laws, ordinances, or regulations.

Banana Joe's of Minnesota, Inc.
d/b/a Banana Joe's Island Bar & Grill

By: Its: DirectorDate: 1/21/03

Minneapolis Police Department

By: 

Lt. Phil Hafvenstein

Commander, License Division

Date: